

**STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF COMMERCE**

In the Matter of the Residential  
Building Contractor License of  
Great Lakes Builders and Remodelers,  
Inc., License No. 20137649.

**RECOMMENDED ORDER  
GRANTING MOTION FOR  
SUMMARY DISPOSITION**

The above-entitled matter is before Administrative Law Judge ("ALJ") Jon L. Lunde on the Department of Commerce's ("Department") motion for summary disposition. On October 26, 1998, after attempts to settle this matter failed, the Department filed a Motion for Summary Disposition and a memorandum in support of the motion. Further attempts were made to settle the case after the Department filed its Motion and throughout November and December 1998. In January 1999, David Hoch, the Respondent in this matter, requested a Stay of Further Proceedings. In an Order dated February 24, 1999, the Administrative Law Judge denied Respondent's request for a Stay of Further Proceedings. In that Order, the Administrative Law Judge ordered that Respondent file a response to the Department's Motion for Summary Disposition on or before April 9, 1999. Respondent filed a reply letter on April 8, 1999. For purposes of this motion, the record closed on April 8, 1999, when the last memorandum was received.

David M. Aafedt, Assistant Attorney General, NCL Tower, Suite 1200, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, represents the Department of Commerce on this motion. Respondent is pro se in this matter.

Based upon the memoranda filed by the parties, all of the filings in this case, and for the reasons set forth in the accompanying Memorandum:

**IT IS RECOMMENDED:**

1. That the Commissioner of Commerce GRANT the Department's Motion for Summary Disposition.
2. That Respondent's license application be DENIED.

ALSO, IT IS ORDERED: That this order be certified to the Commissioner of Commerce under Minn. R. 1400.7600B (1996).

Dated this 14th day of May, 1999.

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JON L. LUNDE  
Administrative Law Judge

### **NOTICE**

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject, or modify the Recommendations contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten (10) days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Gary A. LaVasseur, Deputy Commissioner, Enforcement and Licensing Division, 133 East Seventh Street, St. Paul, Minnesota 55101, (651) 296-2594, to ascertain the procedure for filing exceptions or presenting argument.

### **MEMORANDUM**

#### **Background Facts**

David Hoch and Larry Browne filed an application for a residential building contractor license with the Minnesota Department of Commerce on December 12, 1991 on behalf of their company, Superior Sash and Siding, Inc. ("Superior"). The two men signed the license application as co-owners, each owning 50% of the company. As part of its license application, Superior submitted a \$5,000 surety bond. David Hoch signed the surety bond and represented himself as Superior's President, Partner, or Sole Proprietor.<sup>[1]</sup> The Department issued residential building contractor license number 1312 to Superior on December 18, 1991.<sup>[2]</sup>

In December 1996, Larry Browne was diagnosed with cancer. Over the course of the next year, he was in and out of the hospital being treated for his illness. Mr. Browne passed away in early December 1997.

The Department began receiving complaints about Superior in early October 1997.<sup>[3]</sup> Most of the complaints alleged that Superior and its owner, David Hoch, were entering into contracts with homeowners for contractor or remodeling work, obtaining a down payment from the homeowners, and not returning to complete the work.<sup>[4]</sup> The complaints also claim that the down payments were never returned.<sup>[5]</sup>

On October 29, 1997, Senior Commerce Investigator Christine Friederichs, contacted Superior regarding the complaints and to follow up on two earlier letters sent by the Department requesting a written response from Superior. Ms. Friederichs spoke with David Hoch who identified himself as co-owner and partner of the company. Ms. Friederichs requested that Mr. Hoch respond to the five complaints listed in the earlier

letters by November 3, 1997.<sup>[6]</sup> Ms. Friederichs sent a third letter to Superior on November 12, 1997 requesting that Superior respond to the complaints.<sup>[7]</sup> The Department did not receive a response from Superior.<sup>[8]</sup>

During the course of its investigation, the Department received over twenty complaints that Superior failed to perform its contracts, engaged in fraudulent, deceptive and dishonest practices, and converted funds.<sup>[9]</sup> On January 21, 1998, a Notice of and Order for Hearing was issued based on these twenty separate complaints.<sup>[10]</sup> A hearing took place on April 1, 1998 at the Office of Administrative Hearings. Neither Mr. Hoch nor any other representative on behalf of Superior appeared. As a result, the Administrative Law Judge issued a default order recommending that disciplinary action be taken against Superior's license. The Commissioner of Commerce subsequently revoked Superior's license to do business in Minnesota in early June 1998.<sup>[11]</sup> Since the Commissioner revoked Superior's license, however, the Department has received at least fifteen new complaints against David Hoch and Superior.

In its memorandum supporting its Motion for Summary Disposition, the Department provided a summary of five different complainants that entered into contracts with Superior. Four of the five complainants filed suit against Superior, and some against Superior and David Hoch, individually.

1. Joel and LeeAnn Esse entered into a contract with David Hoch and Superior on July 8, 1997, to perform work on the roof of their home. The total contract price was \$13,369. The Esses paid \$4,400 as a down payment. Superior never did any of the work under the contract, nor did it return the Esses' down payment. On March 18, 1998, the Esses filed a lawsuit against Superior and David Hoch, individually, on the basis of failure of performance and conversion of funds. On May 26, 1998, Ramsey County Conciliation Court entered judgment in favor of the Esses in the amount of \$4,445. Because Superior's bank accounts were overdrawn and inactive, its phone number disconnected, and no forwarding address was left for either Superior or David Hoch, the Esses filed an Application for Payment with the Minnesota Contractor's Recovery Fund.<sup>[12]</sup>
2. Anthony Lancette entered into a contract with Superior and David Hoch on October 18, 1996, to put new siding on Mr. Lancette's house. The total contract price was \$9,350. Mr. Lancette provided a down payment of \$3,184. David Hoch gave Mr. Lancette his business card, which represented Mr. Hoch as "Owner/VP" of Superior. Superior never did the work contracted for, nor did it return Mr. Lancette's down payment. As a result, on January 26, 1998 Mr. Lancette filed suit in Ramsey County Conciliation Court against Superior for failure of performance and conversion of funds. Judgment was entered in Mr. Lancette's favor in the amount of \$3,474. Mr. Lancette eventually filed an Application for Payment from the Contractor's Recovery Fund and received \$3,221.77 under the accelerated claims payment process.<sup>[13]</sup>

3. On March 26, 1997, Craig Peifer entered into a contract with Superior to re-roof his house and build a three-season porch. After an amendment to the original contract, the price for the scheduled work came to approximately \$38,250. Although Superior finished the work, it took eight months to do so instead of six to eight weeks as Superior had initially estimated. Attempting to protect himself from liability, Mr. Peifer had David Hoch sign a Receipt and Waiver of Mechanics' Lien Rights for the full contract price. David Hoch signed the Receipt and Waiver as "OWNER/PRESIDENT" of Superior. The roof put on by Superior leaked and caused damage to Mr. Peifer's walls and ceiling. As a result, Mr. Peifer filed suit against Superior. Judgment was entered in Mr. Peifer's favor and he has been paid \$3,050 under the accelerated claims payment process from the Contractor's Recovery Fund.<sup>[14]</sup>
4. Caroline and Richard Stevenson entered into a contract on August 6, 1997 with Superior and David Hoch. The total contract price was \$5,376 and the Stevensons paid a down payment in the amount of \$1,800. David Hoch informed the Stevensons that Superior's prices were less expensive than its competitors' because Hoch was the co-owner and the company did not have to pay anyone else sales commissions. The Stevensons eventually filed suit against Superior and David Hoch in conciliation court for failure of performance and conversion of funds. Judgment was entered in their favor for the amount of the down payment. The Stevensons are presently in the process of filing for an Application for Payment out of the Contractor's Recovery Fund.<sup>[15]</sup>

On April 17, 1998, Great Lakes Builders & Remodelers, Inc. ("Great Lakes"), the Respondent herein, filed a residential building contractor license application with the Department.<sup>[16]</sup> David Hoch signed the application as the owner and qualifying person of Great Lakes.<sup>[17]</sup> The application included eleven questions regarding the applicant's background to which the applicant must answer either "yes" or "no." The questions most applicable in this case are listed below:

Have you (applicant), or the applicant's qualifying person, owners, partners, officers, directors, employees exercising management or policy control, managers, limited liability company owners/governors or shareholders owning more than 10% of the stock in the corporation ever: .

. . . .

2. Been the subject of any inquiry or investigation by any division of the Minnesota Commerce Department?
5. Been a defendant in any lawsuit or been named in a civil judgment, involving claims of fraud, misrepresentation, conversion, mismanagement of funds, breach of fiduciary duty or breach of contract? . . . .
7. Exercised management or policy control over, or owned 10% or more of the stock of any company that has failed in business or filed bankruptcy petition or been declared bankrupt? . . . .

11. Have you (applicant), or the applicant's qualifying person, owners, partners, officers, directors, employees exercising management or policy control, managers, limited liability company owners/governors or shareholders owning more than 10% of the stock in the corporation ever been affiliated with any residential contracting or residential remodeling, residential roofing, or manufacture home installer business entity that engaged in any activity which would result in a "yes" answer to the above questions 1 through 8?

## **Analysis**

Summary disposition is the administrative equivalent to summary judgment.<sup>[18]</sup> Summary disposition is appropriate when there is no genuine issue of material fact and a party is entitled to judgment as a matter of law.<sup>[19]</sup> A genuine issue is one that is not a sham or frivolous, and a material fact is one which will affect the outcome of the case.<sup>[20]</sup> The moving party must demonstrate that no genuine issues of material fact exist.<sup>[21]</sup> If the moving party is successful, the non-moving party then has the burden of proof to show specific facts are in dispute which have an affect on the outcome of the case.<sup>[22]</sup> It is not sufficient for the non-moving party to rest upon mere averments or denials; it must present specific facts demonstrating a genuine issue for trial.<sup>[23]</sup>

Minnesota law<sup>[24]</sup> provides that the Commissioner of Commerce may take certain disciplinary action<sup>[25]</sup> against a license or licensee if he finds that such action is in the public interest and the licensee -- or others<sup>[26]</sup> -- have engaged in at least one of several illegal activities. One such activity includes filing "an application for a license which is incomplete in any material respect or contains any statement which, in light of the circumstances under which it is made, is false or misleading with respect to any material fact."<sup>[27]</sup> The Department alleges that Respondent violated Minnesota law when he filed his license application on April 17, 1998.

The Department alleges that Respondent violated Minn. Stat. § 326.91, subd. 1(1) when he answered "no" to question 7 on the April 17, 1998 application for a residential building contractor/remodeler license ("application"). Question 7 asks whether Respondent has ever "exercised management or policy control over, or owned 10% or more of the stock of any company that has failed in business, or filed a bankruptcy petition or been declared bankrupt?"<sup>[28]</sup> The Department contends there is no dispute that Respondent was an owner of Superior. This is supported by the fact that Respondent listed himself as 50% owner of Superior on the license application.<sup>[29]</sup> In addition, Mr. Hoch listed himself as President, Partner or Sole Proprietor in the surety bond.<sup>[30]</sup> Finally, the complainants testified that Mr. Hoch represented himself to them as Superior's owner.<sup>[31]</sup> In his responsive letter, Mr. Hoch does not dispute that he was a co-owner of Superior. For these reasons, the ALJ finds that no material facts regarding Mr. Hoch's status as a co-owner of Superior are at issue.

The Department also alleges that Superior failed in business. In support of this, the Department points to the twenty complaints filed against Superior and Mr. Hoch.<sup>[32]</sup> The Department claims that after Larry Browne passed away, Mr. Hoch overdrew Superior's bank account and allowed it to remain inactive until the bank closed it.<sup>[33]</sup> The Department claims that the fifteen lawsuits filed and the judgments entered against Superior are evidence that the business failed.<sup>[34]</sup> It is noted that the judgments against Superior are in excess of \$50,000 and nothing has been paid in an effort to satisfy the judgments. The complainants who obtained a judgment against Superior and Mr. Hoch were paid through the Department's Recovery Fund because neither Superior nor Mr.

Hoch had any assets. The Department claims that these facts are evidence that Superior failed in business.

In his responsive letter, Mr. Hoch admits that when Larry Browne passed away in December 1997, business files were missing from his apartment, which served as Superior's office, and Mr. Browne's mother packed up most of his belongings and left Minnesota. Mr. Hoch also states that he did not intend to deceive the Department on his license application and this is evidenced by the fact that he listed Superior Sash and Siding as his former employer.<sup>[35]</sup> Mr. Hoch did list Superior as a former employer as requested by the application. However, answering the question relating to his employment history did not excuse him from answering other questions truthfully or show that there is a genuine issue of material fact regarding Question 7.

Question 7 in the license applications focuses on financial business failure. It asks whether the applicant has been an owner of any company "that has failed in business or filed a bankruptcy petition or been declared bankrupt?" The fact alone that several lawsuits were brought against Superior and Mr. Hoch, a co-owner of Superior, does not demonstrate that Superior failed in business. Companies frequently face lawsuits. The majority of lawsuits in this case, however, were based on failure to perform the contracted work and conversion of funds (for failing to return down payments).<sup>[36]</sup> The complainants testified, and Mr. Hoch did not deny, that they attempted to contact Superior or Mr. Hoch but were not successful. Mr. Hoch also does not deny that he overdrew and abandoned Superior's bank account, that he failed to perform contracted work, that he failed to return down payments made for the contracted work, that he disconnected his telephone, or that he closed his place of business. It is reasonable to believe that if a business owner takes money from customers for work promised, fails to perform the promised work, and empties and abandons the business bank account, his business will fail financially. Mr. Hoch's business activities with respect to Superior demonstrate that Superior Sash & Siding failed in business.

The Department alleges that Respondent violated Minn. Stat. § 326.91, subd. 1(1) when he failed to answer question 11. The Department contends that if Respondent had answered question 11, and answered it truthfully, he would have been required to amend his answers to questions 1 through 8. Question 11 asks the applicant if he has been involved or affiliated with a residential contracting company that has, for example, held a Minnesota residential building contractor license, been investigated by the Department, or been a defendant in a lawsuit involving claims of fraud. If an applicant answers "yes" to any of the application questions, he is required to attach a detailed explanation to his application.

There is no dispute that Mr. Hoch was a 50% co-owner and partner of Superior. Superior Sash & Siding held a Minnesota residential building contractor license,<sup>[37]</sup> was the subject of a Department investigation, and was a defendant in a lawsuit involving claims of breach of contract and conversion of funds. The Department's licensing

application inquires about all of these activities. By failing to answer question 11, and answering it truthfully, Mr. Hoch filed a materially incomplete license application.

Question 2 asks whether the applicant has “[b]een the subject of any inquiry or investigation by any division of the Minnesota Commerce Department?” Mr. Hoch answered “no.” The evidence presented supports that Mr. Hoch, individually, has not been the subject of an investigation or inquiry by the Department. Although the Department argues to the contrary, the evidence presented names Superior Sash & Siding, Inc. as the subject of the Department’s investigation, not Mr. Hoch individually. This fact, however, also supports a finding that Mr. Hoch filed an incomplete application in a material respect.<sup>[38]</sup>

Mr. Hoch was a co-owner and partner of Superior Sash & Siding, Inc. Superior was the subject of a Department’s inquiry or investigation. There is ample evidence supporting the fact that Mr. Hoch knew Superior was the subject of the Department’s investigation.<sup>[39]</sup> By failing to answer question 11, Mr. Hoch filed an incomplete license application. Because a truthful answer to question 11 would have required Mr. Hoch to amend his answer to question 2 and attach a detailed explanation, this application was incomplete in a material respect.

Finally, the Department alleges that Mr. Hoch violated Minnesota law when he answered “no” to question 5 on the license application. This question asks whether the applicant has ever “been a defendant in any lawsuit or been named in a civil judgment, involving claims of fraud, misrepresentation, conversion, mismanagement of funds, breach of fiduciary duty or breach of contract.” Mr. Hoch filed the license application for Great Lakes on April 17, 1998. At that time, both he and Superior were named as defendants in at least one lawsuit involving claims of breach of contract and conversion of funds.<sup>[40]</sup> Mr. Hoch’s answer to question 5 was false with respect to him as an individual. By failing to answer question 11 and amend his answer to question 5, Mr. Hoch filed a materially incomplete license application.

Based on the foregoing, the Administrative Law Judge is persuaded that the Department’s motion should be granted and Respondent’s application denied.

J.L.L.

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<sup>[1]</sup> Affidavit of Christine M. Friederichs, dated October 26, 1998 (“CMF Aff.”), at ¶2.

<sup>[2]</sup> Id.

<sup>[3]</sup> Id. at ¶6.

<sup>[4]</sup> Id. at ¶7.

<sup>[5]</sup> Id.

<sup>[6]</sup> Id.

<sup>[7]</sup> Id. at ¶8.



<sup>[8]</sup> Id.

<sup>[9]</sup> Id. at ¶9.

<sup>[10]</sup> In the Matter of the Residential Building Contractor License of Superior Sash and Siding, Inc., Id. at ¶10, Ex. C.

<sup>[11]</sup> Id. at ¶11, Ex. E.

<sup>[12]</sup> Affidavit of Joel Esse, dated October 23, 1998 ("Esse Aff."). Mr. Esse testified to these facts in his affidavit.

<sup>[13]</sup> Affidavit of Anthony Lancette, dated October 21, 1998 ("Lancette Aff."). Mr. Lancette testified to these facts in his affidavit.

<sup>[14]</sup> Affidavit of Craig Peifer, dated October 21, 1998 ("Peifer Aff."). Mr. Peifer testified to these facts in his affidavit.

<sup>[15]</sup> Affidavit of Richard Stevenson, dated October 21, 1998 ("Stevenson Aff."). Mr. Stevenson testified to these facts in his affidavit.

<sup>[16]</sup> CMF Aff. ¶11, Ex. F.

<sup>[17]</sup> Id.

<sup>[18]</sup> Minn. R. 1400.5500 (K); 1400.6600.

<sup>[19]</sup> Id.; Minn. R. Civ. P. 56.03.

<sup>[20]</sup> Highland Chateau v. Minnesota Dep't of Pub. Welfare, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984), rev. denied, Feb. 6, 1985.

<sup>[21]</sup> Theile v. Stich, 425 N.W.2d 580, 582 (Minn. 1988).

<sup>[22]</sup> Highland Chateau v. Minnesota Dep't of Pub. Welfare, 356 N.W.2d at 808.

<sup>[23]</sup> Minn. R. Civ. P. 56.05.

<sup>[24]</sup> Minn. Stat. § 326.91, subd. 1.

<sup>[25]</sup> The commissioner may impose a civil penalty pursuant to Minn. Stat. § 45.027, subd. 6, which states as follows: "The commissioner may impose a civil penalty not to exceed \$2,000 per violation upon a person who violates any law, rule, or order related to the duties and responsibilities entrusted to the commissioner unless a different penalty is specified."

<sup>[26]</sup> Minn. Stat. § 326.91 is not limited to the actions of the licensee. Rather, it includes "the applicant, licensee, or other agent, owner, partner, director, governor, shareholder, member, officer, qualifying person, or managing employee of the applicant or licensee or any person occupying a similar status or performing similar functions."

<sup>[27]</sup> Minn. Stat. § 326.91, subd. 1(1) (1998).

<sup>[28]</sup> CMF Aff., Ex. F.

<sup>[29]</sup> Id. at ¶¶2 and 3, Exs. A and B.

<sup>[30]</sup> Id.

<sup>[31]</sup> Stevenson Aff. ¶2; Lancette Aff. ¶3.

<sup>[32]</sup> CMF Aff. at ¶9.

<sup>[33]</sup> Id. at ¶11.

<sup>[34]</sup> Affidavit of Terese Kiefer, dated October 26, 1998, at ¶5.

<sup>[35]</sup> CMF Aff., Ex. F.

<sup>[36]</sup> The Department contends that the judgments obtained against Mr. Hoch are evidence that his business failed. There is no evidence, however, demonstrating that the judgments were obtained prior to April 17, 1998, the date Mr. Hoch filed the license application for Great Lakes. Only Mr. Esse supplied the date the court entered judgment in his favor against Superior and Mr. Hoch, which was on May 26, 1998. Esse Aff. ¶7. The other complainants who filed affidavits did not provide the dates their judgments were entered against Superior and/or Mr. Hoch.

<sup>[37]</sup> Question 1 asks whether the applicant has held a residential building contractor license in any state including Minnesota. CMF Aff., Ex. F. Although there is no evidence that Mr. Hoch, individually, ever held such a license, Superior Sash & Siding did hold a residential building contractor license. CMF Aff., Exs. A and B.

<sup>[38]</sup> In addition to question 2, question 5 on the license application, to which Mr. Hoch answered "no," also demonstrates that Mr. Hoch's failure to answer question 11 resulted in a materially incomplete application. Question 5 asks whether the applicant has been "a defendant in any lawsuit or been named in a civil judgment, involving claims of fraud, misrepresentation, conversion, mismanagement of funds, breach of fiduciary duty or breach of contract?" At the time Mr. Hoch filed his license application for Great

Lakes, Superior Sash & Siding, Inc. was named as a defendant in at least two different lawsuits alleging breach of contract and conversion of funds. Esse Aff. ¶6; Lancette Aff. ¶5.

<sup>[39]</sup> CMF Aff. ¶¶6 – 10. The Department sent two letters to Superior in 1997 requesting a written response regarding several complaints it had received. On October 19, 1997, Ms. Friederichs called Superior and talked to Mr. Hoch. Ms. Friederichs told Mr. Hoch that she was calling about the numerous complaints received about Superior's conduct and asked him to respond to the complaints by November 3, 1997. The Department's numerous attempts to elicit a response from Superior failed. On January 12, 1998, the Department filed a Notice of and Order for Hearing and Order to Show Cause.

<sup>[40]</sup> Esse Aff. ¶¶1 and 6, Exs. A and C.